

APPEAL NO. 040999
FILED JUNE 9, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 1, 2004. The hearing officer determined that the compensable injury of _____, includes an injury to the appellant's (claimant) right shoulder in the form of a sprain/strain, and that the claimant did not have disability as a result of the compensable injury of _____. The claimant appeals the disability determination and the respondent (carrier) responds, urging affirmance. The extent-of-injury determination was not appealed and is final. Section 410.169.

DECISION

Affirmed, as reformed.

The hearing officer discussed with the parties that there was a typographical error in the benefit review officer's report concerning the date of injury (DOI). Everyone agreed that the correct DOI is _____, instead of June 23, 2003. The parties further stipulated that the correct DOI is _____. Notwithstanding that, the Decision and Order contains the incorrect date of June 23, 2003, in the stipulations listed in paragraphs 1.B. and 1.C. We reform the Decision and Order to correct the dates listed in the stipulations to read _____.

Section 401.011(16) defines disability as the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Whether disability exists is a question of fact for the hearing officer to decide and can be established by the testimony of the claimant alone if found credible by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). Although there was conflicting evidence in this case, there is sufficient evidence to support the hearing officer's determination that the claimant did not have disability resulting from the compensable injury of _____. As an appellate-reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this

case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer, as reformed.

The true corporate name of the insurance carrier is **TRINITY UNIVERSAL INSURANCE COMPANY OF KANSAS** and the name and address of its registered agent for service of process is

**RONALD I. HENRY
10000 NORTH CENTRAL EXPRESSWAY
DALLAS, TEXAS 75230.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge